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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,600	10/03/2005	John Graeme Houston	9931-008US	7535
79526	7590	07/24/2008		
DeMont & Breyer, LLC 100 Commons Way, Ste. 250 Holmdel, NJ 07733				
EXAMINER				
HOOK, JAMES F				
ART UNIT		PAPER NUMBER		
3754				
MAIL DATE		DELIVERY MODE		
07/24/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/535,600

**Applicant(s)**

HOUSTON ET AL.

**Examiner**

James F. Hook

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tayside (EP 1,254,645) in view of Kuhlman (DE 597,472). The reference to Tayside discloses the recited insert formed as an insert where at least two helical extending formations 12 extend in from an insert 11, and such is used as an insert into a blood vessel such as grafts and stents, or used in other fields for other fluids, such can be biodegradable, can be formed either as a separate insert or as ribs formed in the wall of the tube, such is used for blood flow and the spiral ribs impart a spiral flow, and where the dimensions can be varied to meet the needs of the user. The reference to Tayside discloses all of the recited structure with the exception of the specific percentage extension of the rib into the flow path including 50%. The reference to Kuhlmann discloses the recited helical formation "a" defining a helix where such extends into the interior of the pipe "b" by at least 50%. It would have been obvious to one skilled in the art to modify the ribs in Tayside to be of any size as set forth in Tayside, where the teachings of Kuhlmann discloses that it is old and known to form such ribs of 50% extension into the conduit to control flow as such is a known percentage extension of an equivalent structure in an equivalent use, where one skilled in the art would only require

routine skill in the art to arrive at optimum values as suggested by Tayside and taught by Kuhlmann and would expect such to function.

### ***Response to Arguments***

Applicant's arguments filed March 17, 2008 have been fully considered but they are not persuasive. The arguments presented are directed to the prior art failing to teach a method which is capable of improving the health of an individual. This argument is not persuasive when the claim language requires only a method of imparting spiral flow and not a method of improving health, therefore this argument is more detailed than the claim language. There are then many reasons given as to why the prior art may not improve the health and one skilled in the art would expect the combination of references to actually harm an individuals health. These are likewise not persuasive when generally the arguments are more detailed than the claim language, and further such arguments are not provided with any evidence or proof that the underlined statements are true when there are no examples given from the prior art which would suggest these statements to be true, or other evidence suggesting one skilled in the art would expect any of these conditions to occur. Therefore, mere allegations of what may happen is not a persuasive argument, especially in light of the fact that claim language is met by the combination of references and the language of the claims is not as specific as the arguments.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references to Hess, Wolpert, Hood, and Houston (194 and 677) disclosing state of the art flow modifiers in tubes or blood vessels.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James F. Hook/  
Primary Examiner, Art Unit 3754

JFH